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The specific rejections and objections of the Office Action are addressed in the paragraphs presented below. The paragraphs are numbered to correspond to the paragraph numbering of the Office Action.

2.

In the Office Action claims 1, 4, 7-13 and 17 were rejected under §102(b) as being anticipated by Auerbach. Claims 1 and 17 are independent. Claims 4, and 7-13 depend from claim 1.

In regard to claim 1, as discussed in greater detail below, the Office Action stated that claim 14 would be allowable if rewritten in independent form. Applicants have amended claim 1 to include all of the limitations of claim 14 as well as those of intervening claims 7 and 13. In light of the amendment to claim 1 the §102(b) rejection base on Auerbach is rendered moot. Because claim 1 is now in condition for allowance those claims which depend therefrom are also in condition for allowance.

In regard to claim 17, Applicants assert that Auerbach fails to teach all of the elements recited in the instant claim. More specifically, Auerbach does not teach a beam having at least two cutting blades positioned at opposite ends of the beam with at least one of the at least two cutting blades is positioned on a front side of the beam and at least one of the at least two cutting blades being positioned on a back side of the beam as the instant claims recite. In contrast to the instant claim, Auerbach teaches only a cutting element (20) with scalloped cutting edges on a single side of the element (see FIGs. 2a and 2b and column 3, lines 40-53).

In light of the above the rejection is respectfully overcome.

4 & 5

In the Office Action claims 2, 3, 5 were rejected under §103(a) as being obvious over Auerbach in view of Yoon, and claim 9 was rejected under §103(a) as well but only as being obvious over Auerbach.



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In response to the various §103(a) rejections Applicants note that the amendment to claim 1 has placed claim 1 in condition for allowance. Dependent claims are nonobvious under §103 if the independent claim from which they depend are nonobvious (*Hartness Int'l, Inc. v. Simplimatic Eng'g Co.*, 819 F.2d 110, 1108, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987)).

The rejection is respectfully overcome.

6.

The Office Action states that claims 6, 14, 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. In response Applicant has amended claim 1 to include all of the limitations of claim 14 as well as those of intervening claim 13 and 7. Claims 7, 13 and 14 have been cancelled.

As a result of the amendment to claim 1, claims 8-12 have been amended to correctly indicate that they depend from claim 1 as opposed to claim 7 which has been cancelled.

In regard to claims 15 and 16, Applicants request clarification on the objection presented in the Office Action. In the Office Action both claims 15 and 16 are objected to as being dependent on a rejected base claim. However, claim 15 as originally filed is an independent claim, and none of the rejections presented in the Office Action indicate that claim 15 is rejected for any reason. It must be noted however, that Applicants believe claim 15 and thus claim 16, which depends therefrom, are in condition for allowance.

If however, claim 15 is rejected Applicant requests that the rejection be presented in a subsequent non-final Office Action so that Applicants may have an opportunity to respond.

FORMALITIES

If an extension of time is required to make this response timely and no separate petition is enclosed, Applicant hereby petitions for an extension of time sufficient to make the response timely. In the event that this response requires the payment of government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

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CONCLUSION

In view of the foregoing it is believed that the present application, with claims 1-6, 8-12, 15-17 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,
VIDAS, ARRETT & STEINKRAUS, P.A.

Date: 1/3/02

By: 

James M. Urzedowski
Attorney Reg. No. 48,596

Suite 2000
6109 Blue Circle Drive
Minnetonka, Minnesota 55343-9185
Telephone No: (952) 563-3000
Facsimile No: (952) 563-3001

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MARKED COPY OF THE AMENDED CLAIMS

Please replace claim 1 with the following amended claim.

1. (Amended) A tool for cutting tissue comprising:
- a body, the body having a drive rod constructed and arranged for longitudinal movement therethrough;
- a handle lever being operatively engaged to the drive rod, such that when the handle lever is moved between a first position and a second position the drive rod is moved between an advanced position and a retracted position, the drive rod extending from a proximal end of the body to a distal end; and
- a cutter beam, cutter beam being pivotally engaged to the distal end of the body, the cutter beam being pivotally moveable between a non-actuated position and an actuated position, a lower pivot member pivotally connects the distal end of the body and the cutter beam, the cutter beam being further pivotally engaged to a distal end of the drive rod, whereby when the drive rod is moved to the advanced position the cutter beam is pivoted about the lower pivot member to the actuated position and when the drive rod is moved to the retracted position the cutter beam is pivoted back to the non-actuated position, the cutter beam comprising a first cutting edge and a second cutting edge opposably mounted on the cutter wherein the first cutting edge is positioned on a front side of the cutter and the second cutting edge is positioned on a back side of the cutter, at least one of the first cutting edge and the second cutting edge being positioned to cuttingly engage surrounding tissue when the cutter is moved into the actuated position.

Please replace claim 8 with the following amended claim.

8. (Amended) The tool of claim [7] 1 wherein the at least one of the first cutting edge and the second cutting edge [at least one cutting edge] is positioned to cuttingly engage the surrounding tissue when the cutter is moved from the actuated position to the non-actuated



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position.

Please replace claim 9 with the following amended claim.

9. (Amended) The tool of claim [7] 1 wherein the at least one of the first cutting edge and the second cutting edge [at least one cutting edge] is straight.

Please replace claim 10 with the following amended claim.

10. (Amended) The tool of claim [7] 1 wherein the at least one of the first cutting edge and the second cutting edge [at least one cutting edge] is curved.

Please replace claim 11 with the following amended claim.

11. (Amended) The tool of claim [7] 1 wherein the at least one of the first cutting edge and the second cutting edge [at least one cutting edge] is U-shaped.

Please replace claim 12 with the following amended claim.

12. (Amended) The tool of claim [7] 1 wherein the at least one of the first cutting edge and the second cutting edge [at least one cutting edge] is serrated.

Please replace claim 17 with the following amended claim.

17. (Amended) A tool for cutting tissue comprising a housing, a shaft, a beam, and an activation member

the housing being at least partially disposed about the shaft, the shaft constructed and arranged to moved proximally and distally within the housing;

the beam being pivotally engaged to a distal end of the shaft, the beam constructed and arranged to be rotated about a pivot member engaged to the distal end of the shaft and the beam, the beam having at least two cutting blades, each cutting blade being positioned at opposite ends of the beam, wherein at least one of the at least two cutting blades is positioned on

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a front side of the beam and at least one of the at least two cutting blades is positioned on a back side of the beam; and

the activation member being operatively engaged to the proximal end of the shaft, when the activation member is placed in an activated position the shaft is moved distally relative to the housing thereby pivoting the beam in a predetermined arc about the pivot member.

Please cancel claims 7, 13 and 14 from the Application without prejudice or disclaimer.

